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JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

JOSEPH LOCHNER, Plaintiff in Error, (Defendant below),

vs.

THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error, (Plaintiff below).

No. 292.

On Writ of Error to the County Court of Oneida County of the State of New York.

MOTION TO ADVANCE.

And now comes the plaintiff in error and moves the Court to advance this case, being No. 292 on the docket of this Court, and assign the same for early hearing, at the present term of the Court, at as early a day after the 23d of January, 1905, as may be practicable and convenient, and for grounds of said motion respectfully assigns the following:

1. This action was commenced in the County Court of Oneida County in the State of New York. It was a criminal proceeding, in which the defendant, Joseph Lochner, was charged with a mis-

demeanor, in that he violated Section 110 of Article eight, of Chapter 415 of the Laws of 1897 of the State of New York, known as "The Labor Law," which said Section reads as follows:

> "No employee shall be required or permitted to work in a biscuit, bread or cake bakery or confectionery establishment more than sixty hours in any one week or more than ten hours in any one day, unless for the purpose of making a shorter work day on the last day of the week; nor more hours in any one week than will make an average of ten hours per day for the number of days during such week in which such employee shall work."

2. The indictment charges that on the 21st day of December 1899, he, the plaintiff in error, was arrested upon complaint of one of his employees for violating the law in *permitting* an employee to work in a bakery more than sixty hours in any one week. That he was convicted in the County Court, and fined twenty dollars, or in default thereof, stand committed to the County Jail for twenty days, and that he paid the fine; that after such conviction the defendant wrongfully, unlawfully and knowingly, with intent on his part to violate the law, *permitted* and employed another employee named, to work more than sixty hours in one week during the week commencing April 19th, and ending April 26th, 1901, in the defendant's biscuit, bread and cake bakery and confectionery establishment, thereby committing a misdemeanor as a second offense, contrary to the form of the statute in such case made

and provided, and against the peace of the people of the State of New York and their dignity.

3. The defendant demurred to the indictment on two grounds, (1) that more than one crime was charged and (2) that the facts stated did not constitute a crime. The local court overruled the demurrer, and the different allegations in the indictment were taken as true under Section 339 of the Code of Criminal Procedure of said State; and judgment of conviction was entered, and the defendant sentenced to pay the fine of $50., or stand committed to the County Jail until the fine was paid, not to exceed fifty days. The judgment was affirmed at the Appellate Division by a divided court, and from that judgment the defendant appealed to the Court of Appeals, where the judgment was again affirmed by a bare majority of the Court.

4. The statute upon which the judgment rests is to be found in the Penal Code, Section 384-1, and reads as follows:

> "Any person who violates or does not comply with * * * the provisions of Article eight of The Labor Law, relating to bakeries and confectionery establishments, the employment of labor and the manufacture of flour or meal food products therein * * * is guilty of a misdemeanor, and upon conviction shall be punished for a first offense by a fine of not less than twenty nor more than one hundred dollars; for a second offense, by a fine of not less than fifty nor more than two hundred dollars,

or by imprisonment for not more than thirty days, or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred and fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment."

5. The plaintiff in error claims that said Section 110 of "The Labor Law" violates Article fourteen, Section 1 of the Constitution of the United States, in holding that the facts as set forth in the indictment constitute a crime.

The question is substantially as follows: Is Section 110 of "The Labor Law" a reasonable and proper exercise of the police power of the State of New York.

The plaintiff in error has filed eight assignments of error, covering fully the application of Section 1 of Article fourteen of the Constitution of the United States to the proposition above stated.

6. The assignments of error before the Court in this case are of great public importance, and until they are definitely and authoritatively determined by this Court, they will continue to be a source of embarrassment to the numerous baking establishments within the State of New York. In the baking business it is impossible to tell in just what space of time the product of the bakery can be turned out; it differs by reason of temperature and other matters. The boss bakers are at times obliged to hire their men to work extra time. This is well understood, and the men contract to work such

extra time for extra pay. As at present interpreted, the law in question leaves the bakers at the mercy of discharged employees, who may harrass their employers by arresting them under the provisions of this statute, for *"permitting"* them to work more than ten hours a day, or sixty hours a week.

7. There are about four thousand bakers in the City of New York alone, who are anxiously awaiting a decision of this case.

Plaintiff in error further says that, as above appears, his personal liberty is involved in respect of the alleged violation of the statute aforesaid, and that if compelled to serve out said sentence in accordance with the terms thereof, he would be subjected to great humiliation, annoyance and expense in a matter over which the courts of the State of New York have no jurisdiction, and no authority to compel him to submit to said imprisonment and to pay said fine.

8. Plaintiff in error further says that there are involved in this case grave and fundamental Constitutional questions concerning the validity of said statute, and the Constitutional rights and liberties of all persons in said State who are in any way amenable to said law, while the same remains in force and effect, and that the final and speedy determination of this Court as to the constitutionality of said statute, is a matter of great public importance, involving as it does the right of all persons in said State coming within its provisions, to enter into contracts with employees or to engage their services for a greater time than ten hours a day.

9. For the reasons aforesaid it is respectfully submitted that the case at bar should be advanced for the earliest possible hearing after the 23d day of January, 1905; this limitation as to the time of said hearing having been consented to by the Attorney General of the State of New York, the defendant in error, who has filed in the office of the Clerk of this Court his consent to the advancement of said case, a copy of which is hereto annexed, marked Exhibit "A," and asked to be taken and considered a part hereof.

We are also authorized to say that the Attorney General of the State of New York concurs in this motion.

WASHINGTON, D. C.
December 19, 1904.

FRANK HARVEY FIELD,
Attorney for Plaintiff in Error.

HENRY WEISMANN,
of Counsel.

EXHIBIT "A"

IN THE

SUPREME COURT OF THE UNITED STATES.

JOSEPH LOCHNER, Plaintiff in Error, (Defendant below),

vs.

THE PEOPLE OF THE STATE OF NEW YORK, Defendant in Error, (Plaintiff below).

No. 292.

The parties in the above entitled case respectfully request its advancement on the calendar for argument at any time after January 23rd, 1905.

TIMOTHY CURTIN,

Attorney for the People, Defendant in Error, by Request and Consent of the Attorney General of the State of New York.